

Introduced by Senator Pavley

February 19, 2010

An act to amend Sections 629.50, 629.51, 629.52, 629.53, 629.54, 629.56, 629.58, 629.60, 629.62, 629.64, 629.66, 629.68, 629.70, 629.72, 629.74, 629.76, 629.78, 629.80, 629.82, 629.86, 629.88, 629.89, 629.90, and 629.94 of the Penal Code, relating to intercepted communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1428, as introduced, Pavley. Criminal investigation: interception of communications.

(1) Existing law allows for an application authorizing the interception of a wire, electronic pager, or electronic cellular telephone to be made by the Attorney General or a district attorney to a judge of a superior court, as specified. Existing law defines wire communication, electronic pager communication, and electronic cellular telephone communication for these purposes.

This bill would delete the references to electronic pager communication and electronic cellular telephone communication and replace those references with references to electronic communication, and would define electronic communication as any transfer of signs, signals, writings, images, sounds, data, or intelligence by a wire, radio, electromagnetic, photoelectric, or photo-optical system, with specified exceptions for tone-only paging, tracking devices, or electronic funds transfer information, as provided. This bill would thereby authorize the above persons to make an application for an order permitting the interception of electronic communications, as defined.

(2) Under existing law an application for a communications interception may be made informally and granted orally if an emergency situation exists, and other factors are present. Existing law conditions

the oral grant of the informal application on the filing of a written application for an order within 48 hours of the oral approval.

This bill would condition the granting of an oral approval on the filing of a written application by midnight of the second full court day after the oral approval is made.

(3) Under existing law an order may not authorize a communications interception for longer than a maximum of 30 days.

This bill would provide that the 30 days would not commence until the day of the actual initial interception, or 10 days after the issuance of the order, whichever comes first.

(4) Existing law requires an order for a communications interception to require that written reports to be made to the judge authorizing the interception, as provided. Existing law requires that a report be filed at least every 6 days until the authorization is terminated.

This bill would require the reports to be made every 10 days, commencing with the date of the signing of the order authorizing the interception.

(5) This bill would make other conforming and clarifying changes.

(6) Existing law specifies obligations for parties applying for and carrying out orders to intercept communication, and makes a violation of these provisions a misdemeanor or felony.

This bill would broaden the types of communication to which these crimes would apply. By creating new crimes, this bill would impose a state-mandated local program.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 629.50 of the Penal Code is amended to
2 read:

3 629.50. (a) Each application for an order authorizing the
4 interception of a wire, ~~electronic pager, or electronic cellular~~
5 ~~telephone communication~~ or *electronic communication* shall be
6 made in writing upon the personal oath or affirmation of the

1 Attorney General, Chief Deputy Attorney General, or Chief
2 Assistant Attorney General, Criminal Law Division, or of a district
3 attorney, or the person designated to act as district attorney in the
4 district attorney's absence, to the presiding judge of the superior
5 court or one other judge designated by the presiding judge. An
6 ordered list of additional judges may be authorized by the presiding
7 judge to sign an order authorizing an interception. One of these
8 judges may hear an application and sign an order only if that judge
9 makes a determination that the presiding judge, the first designated
10 judge, and those judges higher on the list are unavailable. Each
11 application shall include all of the following information:

12 (1) The identity of the investigative or law enforcement officer
13 making the application, and the officer authorizing the application.

14 (2) The identity of the law enforcement agency that is to execute
15 the order.

16 (3) A statement attesting to a review of the application and the
17 circumstances in support thereof by the chief executive officer, or
18 his or her designee, of the law enforcement agency making the
19 application. This statement shall name the chief executive officer
20 or the designee who effected this review.

21 (4) A full and complete statement of the facts and circumstances
22 relied upon by the applicant to justify his or her belief that an order
23 should be issued, including (A) details as to the particular offense
24 that has been, is being, or is about to be committed, (B) the fact
25 that conventional investigative techniques had been tried and were
26 unsuccessful, or why they reasonably appear to be unlikely to
27 succeed or to be too dangerous, (C) a particular description of the
28 nature and location of the facilities from which or the place where
29 the communication is to be intercepted, (D) a particular description
30 of the type of communication sought to be intercepted, and (E) the
31 identity, if known, of the person committing the offense and whose
32 communications are to be intercepted, or if that person's identity
33 is not known, then the information relating to the person's identity
34 that is known to the applicant.

35 (5) A statement of the period of time for which the interception
36 is required to be maintained, and if the nature of the investigation
37 is such that the authorization for interception should not
38 automatically terminate when the described type of communication
39 has been first obtained, a particular description of the facts

1 establishing probable cause to believe that additional
2 communications of the same type will occur thereafter.

3 (6) A full and complete statement of the facts concerning all
4 previous applications known, to the individual authorizing and to
5 the individual making the application, to have been made to any
6 judge of a state or federal court for authorization to intercept wire,
7 ~~electronic pager, or electronic cellular telephone communications~~
8 *or electronic communications* involving any of the same persons,
9 facilities, or places specified in the application, and the action
10 taken by the judge on each of those applications. This requirement
11 may be satisfied by making inquiry of the California Attorney
12 General and the United States Department of Justice and reporting
13 the results of these inquiries in the application.

14 (7) If the application is for the extension of an order, a statement
15 setting forth the number of communications intercepted pursuant
16 to the original order, and the results thus far obtained from the
17 interception, or a reasonable explanation of the failure to obtain
18 results.

19 (8) An application for modification of an order may be made
20 when there is probable cause to believe that the person or persons
21 identified in the original order have commenced to use a facility
22 or device that is not subject to the original order. Any modification
23 under this subdivision shall only be valid for the period authorized
24 under the order being modified. The application for modification
25 shall meet all of the requirements in paragraphs (1) to (6), inclusive,
26 and shall include a statement of the results thus far obtained from
27 the interception, or a reasonable explanation for the failure to obtain
28 results.

29 (b) The judge may require the applicant to furnish additional
30 testimony or documentary evidence in support of an application
31 for an order under this section.

32 (c) The judge shall accept a facsimile copy of the signature of
33 any person required to give a personal oath or affirmation pursuant
34 to subdivision (a) as an original signature to the application. The
35 original signed document shall be sealed and kept with the
36 application pursuant to the provisions of Section 629.66 and
37 custody of the original signed document shall be in the same
38 manner as the judge orders for the application.

39 SEC. 2. Section 629.51 of the Penal Code is amended to read:

629.51. For the purposes of this chapter, the following terms have the following meanings:

(a) “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of a like connection in a switching station), furnished or operated by any person engaged in providing or operating these facilities for the transmission of communications.

~~(b) “Electronic pager communication” means any tone or digital display or tone and voice pager communication.~~

~~(c) “Electronic cellular telephone communication” means any cellular or cordless radio telephone communication.~~

(b) “Electronic communication” means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system, but does not include any of the following:

(1) Any communication defined in subdivision (a).

(2) Any communication made through a tone-only paging device.

(3) Any communication from a tracking device.

(4) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(c) “Tracking device” means an electronic or mechanical device that permits the tracking of the movement of a person or object.

(d) “Aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

SEC. 3. Section 629.52 of the Penal Code is amended to read:

629.52. Upon application made under Section 629.50, the judge may enter an ex parte order, as requested or modified, authorizing interception of wire, ~~electronic pager, or electronic cellular telephone communications~~ or *electronic communications* initially intercepted within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probable cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(1) Importation, possession for sale, transportation, manufacture, or sale of controlled substances in violation of Section 11351, 11351.5, 11352, 11370.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with respect to a substance containing heroin, cocaine, PCP, methamphetamine, or their precursors or analogs where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.

(2) Murder, solicitation to commit murder, the commission of a felony involving a destructive device in violation of Section 12303, 12303.1, 12303.2, 12303.3, 12303.6, 12308, 12309, 12310, or 12312, or a violation of Section 209.

(3) Any felony violation of Section 186.22.

(4) Any felony violation of Section 11418, relating to weapons of mass destruction, Section 11418.5, relating to threats to use weapons of mass destruction, or Section 11419, relating to restricted biological agents.

(5) An attempt or conspiracy to commit any of the above-mentioned crimes.

(b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception, including, but not limited to, communications that may be utilized for locating or rescuing a kidnap victim.

(c) There is probable cause to believe that the facilities from which, or the place where, the wire, ~~electronic pager, or electronic cellular telephone communications~~ or *electronic communications* are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

(d) Normal investigative procedures have been tried and have failed or reasonably appear either to be unlikely to succeed if tried or to be too dangerous.

SEC. 4. Section 629.53 of the Penal Code is amended to read:

629.53. The Judicial Council may establish guidelines for judges to follow in granting an order authorizing the interception of any wire, ~~electronic pager, or electronic cellular telephone communications~~ or *electronic communications*.

SEC. 5. Section 629.54 of the Penal Code is amended to read:

1 629.54. Each order authorizing the interception of any wire;
2 ~~electronic pager, or electronic cellular telephone communication~~
3 ~~or electronic communication~~ shall specify all of the following:

4 (a) The identity, if known, of the person whose communications
5 are to be intercepted, or if the identity is not known, then that
6 information relating to the person's identity known to the applicant.

7 (b) The nature and location of the communication facilities as
8 to which, or the place where, authority to intercept is granted.

9 (c) A particular description of the type of communication sought
10 to be intercepted, and a statement of the illegal activities to which
11 it relates.

12 (d) The identity of the agency authorized to intercept the
13 communications and of the person making the application.

14 (e) The period of time during which the interception is
15 authorized including a statement as to whether or not the
16 interception shall automatically terminate when the described
17 communication has been first obtained.

18 SEC. 6. Section 629.56 of the Penal Code is amended to read:

19 629.56. (a) Upon informal application by the Attorney General,
20 Chief Deputy Attorney General, or Chief Assistant Attorney
21 General, Criminal Law Division, or a district attorney, or the person
22 designated to act as district attorney in the district attorney's
23 absence, the presiding judge of the superior court or the first
24 available judge designated as provided in Section 629.50 may
25 grant oral approval for an interception, without an order, if he or
26 she determines all of the following:

27 (1) There are grounds upon which an order could be issued
28 under this chapter.

29 (2) There is probable cause to believe that an emergency
30 situation exists with respect to the investigation of an offense
31 enumerated in this chapter.

32 (3) There is probable cause to believe that a substantial danger
33 to life or limb exists justifying the authorization for immediate
34 interception of a private wire, ~~electronic pager, or electronic cellular~~
35 ~~telephone communication~~ ~~or electronic communication~~ before an
36 application for an order could with due diligence be submitted and
37 acted upon.

38 (b) Approval for an interception under this section shall be
39 conditioned upon filing with the judge, ~~within 48 hours of~~ ~~by~~
40 *midnight of the second full court day after* the oral approval, a

1 written application for an order which, if granted consistent with
2 this chapter, shall also recite the oral approval under this
3 subdivision and be retroactive to the time of the oral approval.

4 SEC. 7. Section 629.58 of the Penal Code is amended to read:

5 629.58. No order entered under this chapter shall authorize the
6 interception of any wire, ~~electronic pager, or electronic cellular~~
7 ~~telephone~~, or electronic communication for any period longer than
8 is necessary to achieve the objective of the authorization, nor in
9 any event longer than 30 days, *commencing on the day of the initial*
10 *interception, or 10 days after the issuance of the order, whichever*
11 *comes first*. Extensions of an order may be granted, but only upon
12 application for an extension made in accordance with Section
13 629.50 and upon the court making findings required by Section
14 629.52. The period of extension shall be no longer than the
15 authorizing judge deems necessary to achieve the purposes for
16 which it was granted and in no event any longer than 30 days.
17 Every order and extension thereof shall contain a provision that
18 the authorization to intercept shall be executed as soon as
19 practicable, shall be conducted so as to minimize the interception
20 of communications not otherwise subject to interception under this
21 chapter, and shall terminate upon attainment of the authorized
22 objective, or in any event at the time expiration of the term
23 designated in the order or any extensions. In the event the
24 intercepted communication is in a foreign language, an interpreter
25 of that foreign language may assist peace officers in executing the
26 authorization provided in this chapter, provided that the interpreter
27 has the same training as any other interceptor authorized under
28 this chapter and provided that the interception shall be conducted
29 so as to minimize the interception of communications not otherwise
30 subject to interception under this chapter.

31 SEC. 8. Section 629.60 of the Penal Code is amended to read:

32 629.60. Whenever an order authorizing an interception is
33 entered, the order shall require reports in writing or otherwise to
34 be made to the judge who issued the order showing the number of
35 communications intercepted pursuant to the original order, and a
36 statement setting forth what progress has been made toward
37 achievement of the authorized objective, or a satisfactory
38 explanation for its lack, and the need for continued interception.
39 If the judge finds that progress has not been made, that the
40 explanation for its lack is not satisfactory, or that no need exists

for continued interception, he or she shall order that the interception immediately terminate. The reports shall be filed with the court at the intervals that the judge may require, but not less than one for each period of ~~six days~~, *10 days, commencing with the date of the signing of the order*, and shall be made by any reasonable and reliable means, as determined by the judge.

SEC. 9. Section 629.62 of the Penal Code is amended to read:

629.62. (a) The Attorney General shall prepare and submit an annual report to the Legislature, the Judicial Council, and the Director of the Administrative Office of the United States Court on interceptions conducted under the authority of this chapter during the preceding year. Information for this report shall be provided to the Attorney General by any prosecutorial agency seeking an order pursuant to this chapter.

(b) The report shall include all of the following data:

(1) The number of orders or extensions applied for.

(2) The kinds of orders or extensions applied for.

(3) The fact that the order or extension was granted as applied for, was modified, or was denied.

(4) The number of wire, ~~electronic pager, and electronic cellular telephone~~ or *electronic communication* devices that are the subject of each order granted.

(5) The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

(6) The offense specified in the order or application, or extension of an order.

(7) The identity of the applying law enforcement officer and agency making the application and the person authorizing the application.

(8) The nature of the facilities from which or the place where communications were to be intercepted.

(9) A general description of the interceptions made under the order or extension, including (A) the approximate nature and frequency of incriminating communications intercepted, (B) the approximate nature and frequency of other communications intercepted, (C) the approximate number of persons whose communications were intercepted, and (D) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions.

1 (10) The number of arrests resulting from interceptions made
2 under the order or extension, and the offenses for which arrests
3 were made.

4 (11) The number of trials resulting from the interceptions.

5 (12) The number of motions to suppress made with respect to
6 the interceptions, and the number granted or denied.

7 (13) The number of convictions resulting from the interceptions
8 and the offenses for which the convictions were obtained and a
9 general assessment of the importance of the interceptions.

10 (14) Except with regard to the initial report required by this
11 section, the information required by paragraphs (9) to (13),
12 inclusive, with respect to orders or extensions obtained in a
13 preceding calendar year.

14 (15) The date of the order for service of inventory made pursuant
15 to Section 629.68, confirmation of compliance with the order, and
16 the number of notices sent.

17 (16) Other data that the Legislature, the Judicial Council, or the
18 Director of the Administrative Office shall require.

19 (c) The annual report shall be filed no later than April of each
20 year, and shall also include a summary analysis of the data reported
21 pursuant to subdivision (b). The Attorney General may issue
22 regulations prescribing the content and form of the reports required
23 to be filed pursuant to this section by any prosecutorial agency
24 seeking an order to intercept wire, ~~electronic pager, or electronic~~
25 ~~cellular telephone communications or electronic communications.~~

26 (d) The Attorney General shall, upon the request of an individual
27 making an application, provide any information known to him or
28 her as a result of these reporting requirements that would enable
29 the individual making an application to comply with paragraph
30 (6) of subdivision (a) of Section 629.50.

31 SEC. 10. Section 629.64 of the Penal Code is amended to read:

32 629.64. The contents of any wire or electronic communication
33 intercepted by any means authorized by this chapter shall, if
34 possible, be recorded on any recording media. The recording of
35 the contents of any wire or electronic ~~cellular telephone~~
36 communication pursuant to this chapter shall be done in a way that
37 will protect the recording from editing or other alterations and
38 ensure that the recording can be immediately verified as to its
39 authenticity and originality and that any alteration can be
40 immediately detected. In addition, the monitoring or recording

device shall be of a type and shall be installed to preclude any interruption or monitoring of the interception by any unauthorized means. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings shall be made available to the judge issuing the order and sealed under his or her directions. Custody of the recordings shall be where the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of Sections 629.74 and 629.76 for investigations. The presence of the seal provided for by this section, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or electronic-cellular telephone communication or evidence derived therefrom under Section 629.78.

SEC. 11. Section 629.66 of the Penal Code is amended to read:

629.66. Applications made and orders granted pursuant to this chapter shall be sealed by the judge. Custody of the applications and orders shall be where the judge orders. The applications and orders shall be disclosed only upon a showing of good cause before a judge *or for compliance with the provisions of subdivisions (b) and (c) of Section 629.70* and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

SEC. 12. Section 629.68 of the Penal Code is amended to read:

629.68. Within a reasonable time, but no later than 90 days, after the termination of the period of an order or extensions thereof, or after the filing of an application for an order of approval under Section 629.56 which has been denied, the issuing judge shall issue an order that shall require the requesting agency to serve upon persons named in the order or the application, and other known parties to intercepted communications, an inventory which shall include notice of all of the following:

- (a) The fact of the entry of the order.
- (b) The date of the entry and the period of authorized interception.
- (c) The fact that during the period wire, ~~electronic pager, or electronic-cellular telephone communications~~ *or electronic communications* were or were not intercepted.

1 The judge, upon filing of a motion, may, in his or her discretion,
2 make available to the person or his or her counsel for inspection
3 the portions of the intercepted communications, applications, and
4 orders that the judge determines to be in the interest of justice. On
5 an ex parte showing of good cause to a judge, the serving of the
6 inventory required by this section may be postponed. The period
7 of postponement shall be no longer than the authorizing judge
8 deems necessary to achieve the purposes for which it was granted.

9 SEC. 13. Section 629.70 of the Penal Code is amended to read:

10 629.70. (a) A defendant shall be notified that he or she was
11 identified as the result of an interception that was obtained pursuant
12 to this chapter. The notice shall be provided prior to the entry of
13 a plea of guilty or nolo contendere, or at least 10 days prior to any
14 trial, hearing, or proceeding in the case other than an arraignment
15 or grand jury proceeding.

16 (b) Within the time period specified in subdivision (c), the
17 prosecution shall provide to the defendant a copy of all recorded
18 interceptions from which evidence against the defendant was
19 derived, including a copy of the court order, accompanying
20 application, and monitoring logs.

21 (c) Neither the contents of any intercepted wire, ~~electronic pager,~~
22 ~~or electronic cellular telephone communication~~ or *electronic*
23 *communication* nor evidence derived from those contents shall be
24 received in evidence or otherwise disclosed in any trial, hearing,
25 or other proceeding, except a grand jury proceeding, unless each
26 party, not less than 10 days before the trial, hearing, or proceeding,
27 has been furnished with a transcript of the contents of the
28 interception and with the materials specified in subdivision (b).
29 This 10-day period may be waived by the judge with regard to the
30 transcript if he or she finds that it was not possible to furnish the
31 party with the transcript 10 days before the trial, hearing, or
32 proceeding, and that the party will not be prejudiced by the delay
33 in receiving that transcript.

34 (d) A court may issue an order limiting disclosures pursuant to
35 subdivisions (a) and (b) upon a showing of good cause.

36 SEC. 14. Section 629.72 of the Penal Code is amended to read:

37 629.72. Any person in any trial, hearing, or proceeding, may
38 move to suppress some or all of the contents of any intercepted
39 wire, ~~electronic pager, or electronic cellular telephone~~
40 ~~communications~~ or *electronic communications*, or evidence derived

1 therefrom, only on the basis that the contents or evidence were
2 obtained in violation of the Fourth Amendment of the United States
3 Constitution or of this chapter. The motion shall be made,
4 determined, and be subject to review in accordance with the
5 procedures set forth in Section 1538.5.

6 SEC. 15. Section 629.74 of the Penal Code is amended to read:

7 629.74. The Attorney General, any deputy attorney general,
8 district attorney, or deputy district attorney, or any peace officer
9 who, by any means authorized by this chapter, has obtained
10 knowledge of the contents of any wire, ~~electronic pager, or~~
11 ~~electronic cellular telephone communication or electronic~~
12 ~~communication~~, or evidence derived therefrom, may disclose the
13 contents to one of the individuals referred to in this section, *to any*
14 *judge or magistrate in the state*, and to any investigative or law
15 enforcement officer as defined in subdivision (7) of Section 2510
16 of Title 18 of the United States Code to the extent that the
17 disclosure is permitted pursuant to Section 629.82 and is
18 appropriate to the proper performance of the official duties of the
19 individual making or receiving the disclosure. No other disclosure,
20 except to a grand jury, of intercepted information is permitted prior
21 to a public court hearing by any person regardless of how the
22 person may have come into possession thereof.

23 SEC. 16. Section 629.76 of the Penal Code is amended to read:

24 629.76. The Attorney General, any deputy attorney general,
25 district attorney, or deputy district attorney, or any peace officer
26 or federal law enforcement officer who, by any means authorized
27 by this chapter, has obtained knowledge of the contents of any
28 wire, ~~electronic pager, or electronic cellular telephone~~
29 ~~communication or electronic communication~~, or evidence derived
30 therefrom, may use the contents or evidence to the extent the use
31 is appropriate to the proper performance of his or her official duties
32 and is permitted pursuant to Section 629.82.

33 SEC. 17. Section 629.78 of the Penal Code is amended to read:

34 629.78. Any person who has received, by any means authorized
35 by this chapter, any information concerning a wire, ~~electronic~~
36 ~~pager, or electronic cellular telephone communication or electronic~~
37 ~~communication~~, or evidence derived therefrom, intercepted in
38 accordance with the provisions of this chapter, may, pursuant to
39 Section 629.82, disclose the contents of that communication or
40 derivative evidence while giving testimony under oath or

1 affirmation in any criminal court proceeding or in any grand jury
2 proceeding.

3 SEC. 18. Section 629.80 of the Penal Code is amended to read:

4 629.80. No otherwise privileged communication intercepted
5 in accordance with, or in violation of, the provisions of this chapter
6 shall lose its privileged character. When a peace officer or federal
7 law enforcement officer, while engaged in intercepting wire,
8 ~~electronic pager, or electronic cellular telephone communications~~
9 *or electronic communications* in the manner authorized by this
10 chapter, intercepts wire, ~~electronic pager, or electronic cellular~~
11 ~~telephone communications~~ *or electronic communications* that are
12 of a privileged nature he or she shall immediately cease the
13 interception for at least two minutes. After a period of at least two
14 minutes, interception may be resumed for up to 30 seconds during
15 which time the officer shall determine if the nature of the
16 communication is still privileged. If still of a privileged nature,
17 the officer shall again cease interception for at least two minutes,
18 after which the officer may again resume interception for up to 30
19 seconds to redetermine the nature of the communication. The
20 officer shall continue to go online and offline in this manner until
21 the time that the communication is no longer privileged or the
22 communication ends. The recording device shall be metered so as
23 to authenticate upon review that interruptions occurred as set forth
24 in this chapter.

25 SEC. 19. Section 629.82 of the Penal Code is amended to read:

26 629.82. (a) If a peace officer or federal law enforcement
27 officer, while engaged in intercepting wire, ~~electronic pager, or~~
28 ~~electronic cellular telephone communications~~ *or electronic*
29 *communications* in the manner authorized by this chapter,
30 intercepts wire, ~~electronic pager, or electronic cellular telephone~~
31 ~~communications~~ *or electronic communications* relating to crimes
32 other than those specified in the order of authorization, but which
33 are enumerated in subdivision (a) of Section 629.52, or any violent
34 felony as defined in subdivision (c) of Section 667.5, (1) the
35 contents thereof, and evidence derived therefrom, may be disclosed
36 or used as provided in Sections 629.74 and 629.76 and (2) the
37 contents and any evidence derived therefrom may be used under
38 Section 629.78 when authorized by a judge if the judge finds, upon
39 subsequent application, that the contents were otherwise intercepted

1 in accordance with the provisions of this chapter. The application
2 shall be made as soon as practicable.

3 (b) If a peace officer or federal law enforcement officer, while
4 engaged in intercepting wire, ~~electronic pager, or electronic cellular~~
5 ~~telephone communications or electronic communications~~ in the
6 manner authorized by this chapter, intercepts wire, ~~electronic pager,~~
7 ~~or electronic cellular telephone communications or electronic~~
8 *communications* relating to crimes other than those specified in
9 subdivision (a), the contents thereof, and evidence derived
10 therefrom, may not be disclosed or used as provided in Sections
11 629.74 and 629.76, except to prevent the commission of a public
12 offense. The contents and any evidence derived therefrom may
13 not be used under Section 629.78, except where the evidence was
14 obtained through an independent source or inevitably would have
15 been discovered, and the use is authorized by a judge who finds
16 that the contents were intercepted in accordance with this chapter.

17 (c) The use of the contents of an intercepted wire, ~~electronic~~
18 ~~pager, or electronic cellular telephone communication or electronic~~
19 *communication* relating to crimes other than those specified in the
20 order of authorization to obtain a search or arrest warrant entitles
21 the person named in the warrant to notice of the intercepted wire;
22 ~~electronic pager, or electronic cellular telephone communication~~
23 *or electronic communication* and a copy of the contents thereof
24 that were used to obtain the warrant.

25 SEC. 20. Section 629.86 of the Penal Code is amended to read:

26 629.86. Any person whose wire, ~~electronic pager, or electronic~~
27 ~~cellular telephone communication or electronic communication~~ is
28 intercepted, disclosed, or used in violation of this chapter shall
29 have the following remedies:

30 (a) Have a civil cause of action against any person who
31 intercepts, discloses, or uses, or procures any other person to
32 intercept, disclose, or use, the communications.

33 (b) Be entitled to recover, in that action, all of the following:

34 (1) Actual damages but not less than liquidated damages
35 computed at the rate of one hundred dollars (\$100) a day for each
36 day of violation or one thousand dollars (\$1,000), whichever is
37 greater.

38 (2) Punitive damages.

39 (3) Reasonable attorney's fees and other litigation costs
40 reasonably incurred.

1 A good faith reliance on a court order is a complete defense to
2 any civil or criminal action brought under this chapter, or under
3 Chapter 1.5 (commencing with Section 630) or any other law.

4 SEC. 21. Section 629.88 of the Penal Code is amended to read:

5 629.88. Nothing in Section 631, 632.5, 632.6, or 632.7 shall
6 be construed as prohibiting any peace officer or federal law
7 enforcement officer from intercepting any wire,~~electronic pager,~~
8 ~~or electronic cellular telephone communication~~ or *electronic*
9 *communication* pursuant to an order issued in accordance with the
10 provisions of this chapter. Nothing in Section 631, 632.5, 632.6,
11 or 632.7 shall be construed as rendering inadmissible in any
12 criminal proceeding in any court or before any grand jury any
13 evidence obtained by means of an order issued in accordance with
14 the provisions of this chapter. Nothing in Section 637 shall be
15 construed as prohibiting the disclosure of the contents of any wire;
16 ~~electronic pager, or electronic cellular telephone communication~~
17 *or electronic communication* obtained by any means authorized
18 by this chapter, if the disclosure is authorized by this chapter.
19 Nothing in this chapter shall apply to any conduct authorized by
20 Section 633.

21 SEC. 22. Section 629.89 of the Penal Code is amended to read:

22 629.89. No order issued pursuant to this chapter shall either
23 directly or indirectly authorize covert entry into or upon the
24 premises of a residential dwelling, hotel room, or motel room for
25 installation or removal of any interception device or for any other
26 purpose. Notwithstanding that this entry is otherwise prohibited
27 by any other section or code, this chapter expressly prohibits covert
28 entry of a residential dwelling, hotel room, or motel room to
29 facilitate an order to intercept wire,~~electronic pager, or electronic~~
30 ~~cellular telephone communications~~ or *electronic communications*.

31 SEC. 23. Section 629.90 of the Penal Code is amended to read:

32 629.90. An order authorizing the interception of a wire;
33 ~~electronic pager, or electronic cellular telephone communication~~
34 *or electronic communication* shall direct, upon request of the
35 applicant, that a public utility engaged in the business of providing
36 communications services and facilities, a landlord, custodian, or
37 any other person furnish the applicant forthwith all information,
38 facilities, and technical assistance necessary to accomplish the
39 interception unobtrusively and with a minimum of interference
40 with the services which the public utility, landlord, custodian, or

1 other person is providing the person whose communications are
2 to be intercepted. Any such public utility, landlord, custodian, or
3 other person furnishing facilities or technical assistance shall be
4 fully compensated by the applicant for the reasonable costs of
5 furnishing the facilities and technical assistance.

6 SEC. 24. Section 629.94 of the Penal Code is amended to read:

7 629.94. (a) The Commission on Peace Officer Standards and
8 Training, in consultation with the Attorney General, shall establish
9 a course of training in the legal, practical, and technical aspects of
10 the interception of private wire, ~~electronic pager, or electronic~~
11 ~~cellular telephone communications~~ or *electronic communications*
12 and related investigative techniques.

13 (b) The Attorney General shall set minimum standards for
14 certification and periodic recertification of the following persons
15 as eligible to apply for orders authorizing the interception of private
16 wire, ~~electronic pager, or electronic~~ ~~cellular telephone~~
17 ~~communications~~ or *electronic communications*, to conduct the
18 interceptions, and to use the communications or evidence derived
19 from them in official proceedings:

20 (1) Investigative or law enforcement officers.

21 (2) Other persons, when necessary, to provide linguistic
22 interpretation who are designated by the Attorney General, Chief
23 Deputy Attorney General, or Chief Assistant Attorney General,
24 Criminal Law Division, or the district attorney, or the district
25 attorney's designee and are supervised by an investigative or law
26 enforcement officer.

27 (c) The Commission on Peace Officer Standards and Training
28 may charge a reasonable enrollment fee for those students who
29 are employed by an agency not eligible for reimbursement by the
30 commission to offset the costs of the training. The Attorney
31 General may charge a reasonable fee to offset the cost of
32 certification.

33 SEC. 25. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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